* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No.900/2006**

% Judgment reserved on: 20th March, 2007

Judgment delivered on: 28th March, 2007

COMMISSIONER OF INCOME TAX
CENTRAL-II,
NEW DLEHI. ..... Appellant
Through:Mr.R.D.Jolly, Adv.

Vs.

S.M.AGGARWAL
K-101, HAUZ KHAS ENCLAVE,
NEW DELHI. ..... Respondent
Through:Mr.C.S.Aggarwal, Sr.Adv.
with Mr.Prakash Kumar, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B. GUPTA, J.

Revenue has preferred the present appeal under Section 260A of the Income Tax Act (hereinafter referred as Act) against the order dated 23rd September, 2005

passed by Income Tax Appellate Tribunal, Delhi (hereinafter referred to as Tribunal) in ITA No.116/Del/2001 relating to block period 1st April, 1988 to 21st April, 1998.

2. Vide the impugned order, the Tribunal has deleted the addition of Rs.26.05 lacs made on account of unexplained loans advanced by the Assessee and the interest earned thereon.

3. The facts in brief are that the residence of the Assessee at K-101, Hauz Khas Enclave, New Delhi, was searched under Section 132 of the Act on 21st April, 1998. During the course of search, certain documents containing details of certain monetary transactions such as advancement of loan of Rs.22.50 lacs by the Assessee and also income by way of interest thereof at Rs.3.55 lacs were found. The Assessing Officer vide questionnaire dated 27th January, 2000 required the Assessee to explain the expenditure. The explanation given by the Assessee that the account belongs to his daughter Smt.Sarla Gupta was denied by her. The Assessing Officer concluded in his assessment order that the Assessee had earned income

from undisclosed sources which was circulated by way of loan for the purpose of earning interest. Thus, the amount of Rs. 22.5 lacs and interest of Rs.3.5 lacs were added to the income of the Assessee for the assessment year 1998-99.

4. Assessee being aggrieved against the assessment order, preferred an appeal before Commissioner of Income Tax (Appeals) which was allowed.

5. The Revenue challenged the order of Commissioner of Income Tax (Appeals) before the Tribunal and the Tribunal vide impugned order dismissed the appeal of the Revenue.

6. It has been argued by the learned counsel for the Revenue that the Assessee has failed to substantiate the transactions with any evidence and also failed to explain the source thereof. The explanation tendered by the Assessee that the account belongs to his daughter Smt.Sarla Gupta was categorically denied by her and in view of her specific denial, there is no justification to hold it otherwise. The Assessee also failed to rebut the presumption available under Section 132(4A) of the Act and it is nobody's case that document was not in the hand

writing of the Assessee and, thus, the document being found in the possession and control of the Assessee, the burden lies upon him to rebut the presumption.

7. On the other hand, learned counsel for the Assessee has contended that Revenue has not been able to adduce evidence to show that the Assessee earned income relating to the entry or earned interest thereon. There is no evidence to show that the Assessee was advancing any money on interest or had any funds for lending. It is further contended that the document in this case is a dumb document and it does not lead to any conclusion and in support his contention, learned counsel for the Assessee cited a decision of Apex Court reported as ***Mahavir Woolen Mills v. Commissioner of Income Tax (2000) 245 ITR 297***.

8. Another contention is that since the documents seized in this case are dumb document as per the finding of Commissioner of Income Tax (Appeals) and Tribunal and this conclusion is a factual one and, thus, no substantial question of law arises in this case.

9. Relevant portion of the assessment order with regard

to this document reads as under:-

> " Annexure A-28 page 15, gives the details of certain handwritten monetary transactions which shows that the assessee had given a loan of Rs.22.5 lacs on interest and earned interest income of Rs.3.55 lacs on it. The details of the account began from 1.4.97 and the other dated recorded was found 5.1.98 and the interest was calculated on the first day of April 1998. The assessee was asked to substantiate these transactions with supporting and necessary evidences and to explain the sources of these amounts. The assessee vide letter dated 10.2.2000 stated that this is an account of Smt.Sarla Gupta, the assessee's daughter, Summons u/s 131 of the Income Tax Act, 1961 were issued to Smt.Sarla Agarwal and a statement was recorded on 7.4.2000. She categorically stated that she is a housewife and dependent on her husband for household and misc. expenses and she does not have any source of income independently and she has not visited her father's house during 1997 except for a brief period to invite him for her daughter's marriage. She stated that she is living separately with her husband at their residence at C-39, NDSE-II, New Delhi, and she never gave any account of any money to her father. A perusal of this diary shows that the assessee is a very meticulous person and keeps his accounts promptly and regularly. Certain markings with the pencil also shows that he never delays in recording the amounts that are paid and received. A perusal of this account also shows that a detailed account of the amounts that are given on interest against various names like

Kharbanda etc. are mentioned and the dues taken back are recorded in Hindi as "all dues taken 31.3.98". The interest for the 1st of April was also calculated and recorded adjacent to the account of all dues taken back. Therefore, is clearly evident that the assessee had earned income from undisclosed sources and have circulated amongst various persons and earned interest on them. These payments and receipts are not shown in the returns filed by the assessee. In light of the above discussions, an amount of Rs.22,50,000/- and the interest earned on it amounting to Rs.3,55,000/- is added back to the income of the assessee for the A.Y.1998-99. Therefore, total amount of Rs.26,05,000/- is added back to the income for the A.Y.1998-99."

10. The relevant finding of the Tribunal is as under:-

"The version of the assessee was that these entries related to his daughter,namely, Smt.Sarla Gupta. This version was very specific. After Smt.Sarla Gupta denied to have any transaction with the assessee, it was incumbent for the department to have confronted the assessee against the contents of this document. It is significant to point out that the statement of Smt.Salra Gupta was recorded by the Assessing Officer on 7.4.2000. The assessee was not called to cross examine her. Further, the statement of the assessee himself was not recorded at any stage during the assessment proceedings. It is further to be pointed out that after recorded of the statement of Smt.Sarla Gupta detailed questionnaire was subsequently given to the assessee but no query was made regarding this

> document. In view of these facts, the learned CIT(A) was justified in reversing the conclusion drawn by the Assessing Officer. The evidentiary value of a document is to be considered on the basis of its proof. If the evidence collected against a person has not been confronted against him then it cannot be utilized against him. In the present case, the Assessing Officer has taken into account the statement of Smt.Sarla Gupta and has utilized the same against the assessee but the fact remains that this statement was recorded behind the back of the assessee and no opportunity was given to him to cross examine her.
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> "We have ourselves examined the contents of the document and are unable to draw any clear and positive conclusion on the basis of figures noted on it. The letters 'H.S.', 'T.2' and 'D-Shop' cannot be explained and no material has been collected to explain the same. Likewise, the figures too are totally unexplained and on the basis of notings and jottings, it cannot be said that these are the transactions carried out by the assessee for advancing money or for taking money. Thus, in our opinion, this is a dumb document."

11. In the present case the Assessing Officer has placed reliance on the statement of Smt.Sarla Aggarwal, daughter of the Assessee while arriving at the conclusion, that the entries belong to the transactions of the Assessee. This statement made by Smt.Sarla Gupta, cannot be said to be

relevant or admissible evidence against the Assessee, since the Assessee was not given any opportunity to cross-examine her and even from the statement, no conclusion can be drawn that the entries made on the relevant page belongs to the Assessee and represents his undisclosed income. It is also an admitted fact that the statement of the Assessee was not recorded at any stage during the assessment proceedings. The only conclusion which can be drawn about the nature and contents of the document is that it is a dumb document and on the basis of the entry of notings or figure etc. in this document, it cannot be concluded that this represents the undisclosed income of the Assessee.

10. It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So, unless and until the contents of the document are proved against a person, the possession of the document or hand writing of that person, on such document by itself cannot prove the contents of the document. These are the findings of fact recorded by both the authorities, i.e., Commissioner of Income Tax (Appeals)

and the Tribunal.

11. In ***Mahavir Woolen Mills (supra)*** case, during the course of search and seizure proceedings, certain slips were found, which, the Assessing Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly reflected in the books of accounts. The Assessee's stand before the Tribunal was that the documents were “dumb documents” which did not contain full details about the dates of payment and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. The Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, the seized documents could not be regarded as “dumb documents”.

12. While dismissing the appeal, the Apex Court held:-

> “That the Tribunal had come to a certain factual conclusion about the nature of the papers seized. On the question whether the documents did or did not contain the particulars, the tribunal observed that they did contain certain materials which were sufficient to come to a conclusion about cash payments having been made in addition to those made by cheques and drafts. The conclusion was essentially factual. No substantial question of law arose from its order.”

13. Similarly, in the present case as already held above, the documents recovered during the course of search from

the Assessee are dumb documents and there are concurrent findings of Commissioner of Income Tax (Appeals) and the Tribunal to this effect. Since the conclusions are essentially factual, no substantial question of law arises for consideration.

14. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

15. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

(V. B. GUPTA)
JUDGE

March 28, 2007 **(MADAN B. LOKUR)**
bisht **JUDGE**